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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NITHYALAKSHMI SAMPATHKUMAR,
MATTHEW J. WARREN, MARTIN MALY,
and MARK W. FUSSELL

Appeal 2009-015380
Application 09/901,368
Technology Center 2100

Before ROBERT E. NAPPI, ERIC S. FRAHM, and KALYAN K. DESHPANDE, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE[1]

The Appellants seek review under 35 U.S.C. § 134(a) of a final rejection of claims 1-19 and 38, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

The Appellants invented a system and method for providing a streaming input and streaming output, incremental XML transformer. Specification 4:25-26.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added]:

> 1. A system for transforming XML items, the system comprising:
> [1] a memory configured to receive and store one or more input XML items;
> [2] a transformer that transforms the one or more input XML items in a first format to one or more transformed XML items in one or more second XML formats; and
> [3] an output manager that facilitates at least one of selectively pulling and pushing a subset of the one or more input XML items, the subset of the one or more XML items is less than the whole one or more input XML items.

REFERENCES

The Examiner relies on the following prior art:

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[1] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Jan. 30, 2009) and the Examiner's Answer ("Ans.," mailed Apr. 30, 2009).

Omoigui	US 2003/0126136 A1	Jul. 3, 2003
Kuznetsov	US 6,772,413 B2	Aug. 3, 2004

Matjaz Klancar and Dejan Sarka, *ADO.NET*, http://sql.reproms.si/data%5Cpodatki%5CMatjazk%5Cado, net. ppt, Copenhagen, pp. 1-19 (March 6-8, 2001) ("ADO.NET").[2]

REJECTIONS

Claims 1, 3, 4, 5, and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kuznetsov.

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kuznetsov and Omoigui.

Claims 6-18 and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kuznetsov and ADO.NET.

ISSUE

The issue of whether the Examiner erred in rejecting claims 1-19 and 38 turns on whether Kuznetsov teaches or suggests "an output manager that facilitates at least one of selectively pulling and pushing a subset of the one or more input XML items, the subset of the one or more XML items is less than the whole one or more input XML items," the combination of Kuznetsov and Omoigui teaches or suggests "the transformer comprises an action frame stack that holds one or more actions," and whether the Examiner erred in combining Kuznetsov and ADO.NET.

[2] Throughout this decision, we refer to the official translation of ADO.NET provided to the USPTO by FLS, Inc. and made of record March 2005 (PTO 05-2414).

ANALYSIS

We have reviewed the Examiner's rejections in light of the Appellants' contentions that the Examiner has erred.

We disagree with the Appellants' conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to the Appellants' Appeal Brief. We concur with the conclusion reached by the Examiner. We highlight the following subset of arguments for emphasis.

Claims 1, 3, 4, 5, and 19 rejected under 35 U.S.C. §103(a) as being unpatentable over Kuznetsov

The Appellants contend that Kuznetsov fails to teach or suggest "an output manager that facilitates at least one of selectively pulling and pushing a subset of the one or more input XML items, the subset of the one or more XML items is less than the whole one or more input XML items," as recited in claim 1 and as similarly recited in claim 19. App. Br. 5-6. The Appellants argue that Kuznetsov specifically fails to describe "selectively pulling or pushing a subset of input XML items." App. Br. 5-6.

We disagree with the Appellants. As found by the Examiner, Kuznetsov describes a method and apparatus that uses a set of translators to transform a plurality of XML items from a first format to a second format. Ans. 3-4 (citing Kuznetsov 14:51-59). The method uses an XSLT interpreter to parse an XSL stylesheet that contains a number of instructions. Kuznetsov 14:42-45. The interpreter transforms an input XML vocabulary and outputs the data into a stream. Kuznetsov 14:51-55. The Examiner

further found that Kuznetsov describes that any number of translators can be implemented such that an entire set (or a selected subset) of packets can be translated during runtime. Ans. 4 (citing Kuznetsov 13:66 – 14:1). That is, XML items are parsed and transformed prior to entering the stream. A person with ordinary skill in the art would have understood that the parsing and transforming of XML items before streaming is functionally the same as pulling or pushing the XML items. Furthermore, a person with ordinary skill in the art would have understood that the interpreter is enabled to select a subset of data to transform and stream and a subset of data is less than or equal to the whole set of data. As such, Kuznetsov teaches or suggests the features of claim 1.

Furthermore, although the Appellants argue that Kuznetsov fails to teach or suggest the "node selection abstracting component that dynamically constructs a subset of input XML items from a set of input XML items" as per claim 19 (App Br. 9), we agree with the Examiner that Kuznetsov's description that an interpreter transforms a selected subset of XML items at a specific point before streaming the items is functionally the same as selecting a specific node to transform a subset of XML items. Ans. 7 (citing Kuznetsov 14:33-39).

The Appellants further contend that Kuznetsov is not an enabling reference because Kuznetsov fails to specifically describe how any number of translators can facilitate at least one of selectively pulling and pushing a subset of the transformed XML items. App. Br. 6-8. The Appellants argue that Kuznetsov fails to explain how the selected subset is generated or how one stream is distinguished from another. App. Br. 6. The Appellants

contend that such a lack of disclosure renders claim 1 inoperable. App. Br. 8-10.

We disagree with the Appellants. Claim 1 merely requires "an output manager that facilitates at least one of selectively pulling and pushing a subset of the one or more input XML items, the subset of the one or more XML items is less than the whole one or more input XML items." Claim 1 does not limit how (i) the subset of XML items is generated, and/or (ii) the output manager facilitates the pushing or pulling step. As such, the Appellants' contentions that Kuznetsov fails to describe these features are not persuasive because the Appellants' arguments are not commensurate with the scope of claim 1. Furthermore, Kuznetsov is enabling to the extent that claim 1 requires. That is, Kuznetsov enables the descriptions such that Kuznetsov teaches or suggests claim 1. As such, Kuznetsov need not enable features that are not required by the claims.

Claim 2 rejected under 35 U.S.C. §103(a) as being unpatentable over Kuznetsov and Omoigui

The Appellants contend that the combination of Kuznetsov and Omoigui fails to teach or suggest "the transformer comprises an action frame stack that holds one or more actions," as recited by claim 2. App. Br. 10-12. The Appellants specifically argue that Omoigui fails to describe an "action frame stack." App. Br. 11.

We disagree with the Appellants. The Appellants offer that the definition of an "action frame stack" includes a queue that can store actions while other actions are being processed. App. Br. 11. The plain and ordinary meaning of a stack in the computer arts encompasses a data

structure stores items to be accessed in a specified order. As such, the Appellants' offered definition for an "action frame stack" is consistent with the plain and ordinary meaning. The Examiner and Appellants agree that Omoigui describes a "Web services protocol stack" that encompasses a collection of protocols, where a protocol includes syntax or a set of rules. A person with ordinary skill in the art would have understood that the processing of protocols in a stack is the same as processing a set of actions in a stack. The Appellants have not provided any clear rationale or evidence to illustrate the distinctions between the claimed stack comprising actions to be accessed and processed and Omoigui's stack of protocols to be accessed and processed. As such, we do not find the Appellants argument to be persuasive.

The Appellants further assert that Omoigui fails to teach or suggest "an event state machine that tracks state associated with transforming the one or more input XML items and an event processor that receives events generated in processing the one or more actions stored in the action frame stack," as recited by claim 2. App. Br. 12-13. The Appellants recite the claimed limitations of claim 2 and generally allege that Omoigui fails to teach or suggest these claim limitations. As such, we do not find the Appellants' assertions to be a substantive argument. *See* 37 C.F.R. § 41.37(c)(1)(vii) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."); *In re Lovin,* 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and

a naked assertion that the corresponding elements were not found in the prior art.").

Claims 6-18 rejected under 35 U.S.C. §103(a) as being unpatentable over Kuznetsov and ADO.NET

The Appellants first contend that ADO.NET should not be considered prior art because ADO.NET provides no publication date, as required by MPEP § 2128. App. Br. 13-15. The Appellants acknowledge that ADO.NET includes a printed date on the cover sheet, but specifically argue that is insufficient proof that ADO.NET was publically available prior to the filing date of the claimed invention, July 9, 2001. App. Br. 14.

We disagree with the Appellants. The Examiner found that ADO.NET includes a date of March 6-8, 2001 on the cover sheet of ADO.NET. The Examiner additionally found that ADO.NET consists of slides that were presented at a conference in Copenhagen. Ans. 19. The Examiner provided a PTO certified translation that authenticates the contents of ADO.NET. *See supra*, p. 3; p. 3, n.2. The facts before us are distinguishable from *In re Lister,* 583 F.3d 1307 (Fed. Cir. 2009). In *In re Lister*, our reviewing court held that in "a situation in which an examiner comes across an undated reference…[w]e surely would not view the mere existence of the reference…as prima facie evidence that it was available prior to the applicant's critical date." *Id.* at 1317. Here, the Examiner has found that the ADO.NET includes a specific date of March 6-8, 2001. As such, the Examiner has demonstrated more than the mere existence of an undated reference. Accordingly, we conclude that the Examiner has established a *prima facie* showing that ADO.NET qualifies as prior art.

Upon the Examiner establishing a *prima facie* showing that ADO.NET qualifies as prior art, the burden shifts to the Appellants to provide evidence that ADO.NET does not qualify as prior art. *Id.* at 1317. While the Appellants assert that "any desired date can be printed on an internet document" (App. Br. 14), the Appellants do not provide any evidence that the March 6-8, 2001 date printed on ADO.NET is not a publication date, is not the date ADO.NET was presented at a conference, or is any other date that would preclude ADO.NET from qualifying as prior art. That is, the Appellants fail to provide any evidence to rebut the Examiner's *prima facie* showing that ADO.NET qualifies as prior art. As such, we are not persuaded by the Appellants' argument.

The Appellants further contend that the combination of Kuznetsov and ADO.NET fails to describe the limitations of claims 6, 8, 9, 10, 12, 15, 16, and 18. App. Br. 16-19. The Appellants argue that ADO.NET fails to describe *all* abstraction of data, the *all* data abstracted perform some function, and *all* SQL queries facilitate minimizing processing and these arguments are presented in similar language for each of these claims. App. Br. 16-19. We disagree with the Appellants. It appears that the Appellants are arguing that the combination of Kuznetsov fails to describe limitations that are not found in the claims. Since the Appellants arguments are not commensurate with the scope of claims 6, 8, 9, 10, 12, 15, 16, and 18, the Appellants' arguments are not found to be persuasive.

The Appellants also contend that Kuznetsov and ADO.NET fail to provide the requisite motivation to combine the teachings of the references. App. Br. 17-18. We disagree with the Appellants. As discussed in the *KSR Int'l Co. v. Teleflex Inc.,* 127 S.Ct. 1727 (2007),

> "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness'). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ".

Id. at 1742. Here, the Examiner has offered an articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. The Examiner found that a person with ordinary skill in the art would have understood the benefits of increasing the flexibility of customization and efficiencies by implementing XPath via source code. Ans. 9-16. Although this evidence to combine the reference is explicitly found in the cited prior art, the Examiner found that a person with ordinary skill in the art would have taken the creative steps and inferences in order to combine the references.

CONCLUSION

The Examiner did not err in rejecting claims 1-19 and 38.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1-19 and 38 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

ELD